

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JAMES CURTIS SPEARS,)
Petitioner,)
v.) 1:11CV97
) 1:07CR372-1
)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

On June 26, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. No objections to the Recommendation have been filed. Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #74] is hereby adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc. #38] is GRANTED as set out in the Recommendation, the Judgment [Doc. #23] is therefore VACATED, and Petitioner's "Motion to Modify Imposed Term of Imprisonment as per [HR 3245]" [Doc. #35] is DENIED without prejudice. The Clerk is directed to set this matter for resentencing. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the

Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This the 4th day of September, 2013.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge